

( **FEDERAL MARITIME COMMISSION** )  
( **SERVED FEBRUARY 14, 1996** )  
( **EXCEPTIONS DUE 3-7-96** )  
( **REPLIES TO EXCEPTIONS DUE 3-29-96** )

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 95-09**

**AAEL AMERICA AFRICA EUROPE LINE GMBH**

**v.**

**VIRGINIA INTERNATIONAL TRADE & INVESTMENT  
GROUP LLC AND WILLIAM W. JOYCE III**

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Officer and member of Limited Liability Company (LLC) found to have committed fraudulent conduct and to have given false representations regarding the LLC's intentions to pay for certain shipments; such officer and member found personally liable to pay freight and charges for those shipments. Counter claims dismissed.

*Kevin J. Keelan* for the complainant, and counter respondent, AAEL.

*Edward D. Greenberg* and *Jamie Palter Rennert* for the respondent, and counter complainant, William W. Joyce III.

**INITIAL DECISION<sup>1</sup> OF CHARLES E. MORGAN,  
ADMINISTRATIVE LAW JUDGE**

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<sup>1</sup>This decision will become the decision of the Commission in the absence of review thereof by the Commission (Rule 227, Rules of Practice and Procedure, 46 CFR 502.227).

This proceeding initially concerned two (2) respondents. Previously a default judgment was entered against Virginia International Trade & Investment Group LLC (VITIG). VITIG had failed to remit to complainant AAEL America Africa Europe Line GMBH (AAEL) the ocean freight and charges due on six shipments from the United States to Africa. It is AAEL's understanding that VITIG is no longer in business. Having failed to collect these charges from VITIG, AAEL now seeks to collect them from William W. Joyce III (Joyce).

This proceeding now is concerned only with the complaint against the respondent Joyce. The complainant originally requested separate handling of the complaint against the two respondents, apparently hoping to make collections from VITIG in the first instance.

Joyce has filed a counter-complaint against AAEL, in which Joyce alleges that AAEL has subjected Joyce to unreasonable prejudice, disadvantage, and coercion. Joyce also has counter-claimed that AAEL violated Rule 112 of our Rules of Practice and Procedure concerning verification of documents. Joyce counter-claims for reparation and attorneys' fees.

The facts in the present proceeding against Joyce include certain details. The complainant, AAEL, is a foreign ocean common carrier, with an agent located in the United States, namely Delmas AAEL, Inc.

The respondent Joyce is an officer (president) and member of VITIG. VITIG is a limited liability company according to laws of the state of Virginia. Joyce has an ownership interest of 34 percent of VITIG. Joyce also has the title of Chief Executive Officer of VITIG. Delmas AAEL dealt only with Joyce.

The other two owners of VITIG are located abroad, apparently in Africa, and may be husband and wife.

Sadiya Abukar Hassen, a female, owns 33 percent of VITIG and has the titles of President and Chief Financial Officer. Apparently she is married to Soleman Abidi Idd.

Soleman Abidi Idd owns 33 percent of VITIG, and has the titles of President and Chief Operating Officer.

The initial capital, and the only capital, contributed to VITIG by the above three (3) of its officers and members was zero. In other words each put up nothing in forming VITIG.

The complainant so far has been unable to collect from anyone the outstanding ocean freight and charges due on the six shipments described as:

<u>Bill of Lading</u>	<u>Date of B/L</u>	<u>Vessel</u>	<u>Freight and Charges</u>
AAEU 700	01-27-94	URSUS DELMAS	\$ 4,125.00
AAEU 701	03-19-94	SIRIUS DELMAS	4,124.04
AAEU 701	04-20-94	CRIMMITSCHAU	7,450.00
AAEU 702	05-20-94	BALKAN DELMAS	4,917.00
AAEU 703	05-20-94	BALKAN DELMAS	2,533.00
AAEU 700	07-13-94	GOTLANDIA	<u>7,450.00</u>
		Total	\$30,599.04

As seen in part above, between January 27, 1994 and July 13, 1994, VITIG was named as the shipper for the said six shipments, for which AAEL bills of lading were issued,

and for which AAEL carried the shipments from New York, N.Y. (5 shipments) and from Houston, Texas (1 shipment), to Pointe Noire, Congo (2 shipments), and to Libreville, Gabon (4 shipments). The shipments consisted of canned soup, sardines, meat, and miscellaneous, according to the bills of lading.

All of the bills of lading in issue were stamped, "Freight Prepaid," but in fact the bills were not prepaid and instead amounted only to promises to pay sometime.

This is shown, for example, for the bill of lading for the last listed shipment, on the GOTLANDIA on July 13, 1994, in a letter from Billy Joyce, that is, respondent William W. Joyce III, President-North American Region, as noted in the letter to Delmas AAEL, Inc., dated August 5, 1994. Therein Joyce says he is sorry about VITIG's past due account. He also states that he "discussed this in depth with Soleman in Gabon and we are making all efforts possible to bring these bills up to date." He also states that Soleman agrees "that the cash flow now being generated and the cash flow from the container arriving soon will be used to make payments on these bills and not to purchase new product."

Despite the promises of VITIG's officers, Delmas AAEL never received any settlement offer from VITIG or anyone acting on its behalf.

The only individual connected with VITIG who dealt with Delmas AAEL regarding cargo movements, payment of freight and the release of containers was respondent Joyce. Joyce fraudulently misrepresented to AAEL that the full freight charges would be paid to AAEL if AAEL released VITIG's containers.

Delmas AAEL had no reason to know what stake Joyce held in VITIG. Delmas AAEL believed that Joyce was in charge of VITIG's finances. At all times, Delmas AAEL

dealt with Joyce, the president of VITIG, who held himself out as such without any restrictions or qualifications.

Since Joyce apparently had defrauded AAEL by inducing it to release VITIG's containers, AAEL would not agree to release Joyce from liability.

AAEL permitted VITIG to ship on a "freight prepaid" basis and released its possessory liens, because of AAEL's prior relationship with Joyce in his other company, BRITCO, and because of Joyce's other promises. BRITCO had paid its freight and charges.

AAEL has submitted the sworn statement of Kevin W. Shields, vice-president of Delmas AAEL, Inc. He states that AAEL seeks to recover outstanding freight and charges, plus interest, and plus attorneys' fees, which resulted from the fraudulent and deceitful conduct of William W. Joyce III, and he seeks dismissal of Joyce's counterclaim. Despite Joyce's repeated promises that the freight and charges would be paid for the six shipments herein, such freight and charges were never paid to AAEL. The latter was unable to mitigate its losses by asserting its lien on the cargo and by salvaging the cargo at the ports of discharge. Repeated demands to Joyce for payment of the freight by VITIG, the shipper, were futile.

Based upon assurances by Joyce, AAEL released the container which was carried on board of the GOTLANDIA, the final shipment carried by AAEL for VITIG. Joyce had clearly misrepresented VITIG's financial position, as it is now obvious that VITIG was going out of business at the time the last shipment was en route to West Africa. Mr. Shields is of the opinion that there never was any intention by VITIG or by Joyce to pay AAEL.

Mr. Shields concludes that there were numerous instances of misrepresentation, fraud, bad faith and deceit.

The opening brief on behalf of AAEL America Africa Europe Line GMBH, the complainant and counter respondent, contains numerous meritorious arguments.

There were repeated violations by VITIG and Joyce of section 10(a)(1) of the Shipping Act of 1984, in that VITIG and Joyce obtained transportation for property at less than the applicable rates. VITIG and Joyce paid nothing, and obtained transportation by unjust or unfair devices or means.

AAEL relied upon the fraudulent misrepresentations and promises at the specific requests of Joyce who made deceitful representations in bad faith. Joyce advised AAEL in writing that the sales of the cargo would be used to pay AAEL.

Joyce in his capacity as an officer and member of VITIG induced AAEL to transport the cargo, without prepayment of freight charges and with AAEL relinquishing its possessory liens. This was an unjust or unfair means of obtaining transportation without payment of the tariff rates and charges. VITIG or Joyce simply never paid the freight and charges.

The complaint is timely. It was filed in 1995, well within the three (3) years from the dates in 1994 of the six bills of lading herein.

VITIG owes AAEL for the freight and charges for the six (6) shipments herein. VITIG failed to pay AAEL \$30,599.04 for the six shipments herein.

Joyce's fraudulent and deceitful conduct in his capacity as an officer and member of VITIG makes him personally liable for VITIG's debts to AAEL. Joyce's conduct clearly falls outside the scope of the Virginia Limited Liability Company Act, inasmuch as it is well

established common law that an officer or director of a corporation is personally liable to a corporation's creditors for the tortious or fraudulent conduct of the officer. By analogy, a member or officer of a limited liability company is liable just as an officer or director of a corporation for the officer's fraudulent conduct.

In *Limited Liability Companies: A State Guide to Law and Practice*, Callison and Sullivan, West Publishing, 1994, the following is stated:

There are several important exceptions to the rule that members are not liable for the LLC's debts and obligations. First, members are liable for their own tortious conduct, even when they act on the LLC's behalf. . . .

Regardless of Virginia's laws, we here are concerned with Federal Maritime Commission laws and regulations. If there were any conflicts, it would be necessary to give precedence to Federal Maritime Commission laws and regulations. Please see Docket No. 89-10, served January 16, 1990, 25 SRR 719, *Safbank Line, Ltd. v. The Hairlox Co., Inc.* Therein it was held, in part, that there was no merit to the contention that complainant carrier was obligated to effect service on respondent's agent in accordance with the laws of the District of Columbia, when the complaint was properly served by certified mail in accordance with Commission rules, consistent with the Administrative Procedure Act and due process.

In other words, proceedings before administrative agencies are not necessarily governed by the Federal Rules of Civil Procedure or the laws of any state. Also, it would be unreasonable for the Federal Maritime Commission to be required to reconcile many


and presumably varied state laws, when Federal Maritime Commission laws and rules clearly prevail.

It is concluded and found that William W. Joyce III is responsible for the freight and charges due on the six shipments herein to Africa, because he is not protected by the limited liability company law because of his own fraudulent conduct and representations and promises on behalf of VITIG.

It is further concluded and found that Joyce's counter-claim is without merit, and hereby it is dismissed.

It is further concluded and found that Joyce must pay the sum total of \$30,599.04 of freight and charges due on the six shipments to the complainant AAEL.

It is further concluded and found that Joyce must pay to AAEL interest on the six shipments, and AAEL is also awarded attorneys' fees, yet to be determined, appropriate to the matter herein to be paid by Joyce.

  
Charles E. Morgan  
Administrative Law Judge

Washington, D.C.  
February 14, 1996

Attachment: Letter from Joyce to Delmas AAEL, Inc., dated August 5, 1994.



TO : DELMAS AAEL, INC.

ATTN. : KEVIN SHIELDS  
PATRICK TOOSEY

FROM : BILLY JOYCE

DATE : AUGUST 5, 1994

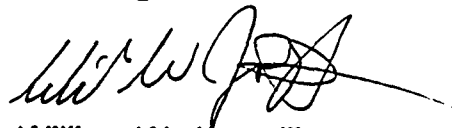
SUBJECT : PAST DUE INVOICES

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I am sorry that I have not contacted you concerning our past due account but, I have been traveling in the last few days. I did receive your fax and have forwarded it to Dillon for verification. I was not surprised by the amount due but, I am sure that we are more current than you indicated. I am sorry for this delay in payment and I appreciate your patience. However, we are still feeling the affects of the devaluation and the normal slow summer (May, June and July) sales. I have discussed this in depth with Soleman in Gabon and we are making all efforts possible to bring these bills up to date. With most of the expiate population just starting to return from vacation and the French workers returning after the devaluation, we are confident of a greatly increased cash flow. I would hope that you would not block the container on the Gotlandia because the goods inside this container represents about \$60,000.00 in sales/cash flow which will go a long way to solve this problem. Soleman has agreed that the cash flow now being generated and the cash flow from the container arriving soon, will be used to make payments on these bills and not to purchase new product, until we reach an acceptable amount due on our account.

Again I want to thank you for your patience and I assure you that we are doing all possible to make these bills current and return our account to good standing.

Best Regards,



William W. Joyce III  
President - North American Region

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